



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, मंगलवार, 29 जनवरी, 1974/9 माघ, 1895

GOVERNMENT OF HIMACHAL PRADESH

LOCAL SELF GOVERNMENT DEPARTMENT

NOTIFICATION

Simla-2, the 14th December, 1973

No. 1-11/70-LSG.—In exercise of the powers conferred by sections 255 and 273 of the Himachal Pradesh, Municipal Act, 1968. (Act No. 19 of 1968), the Governor, Himachal Pradesh is pleased to make the following Rules entitled as the Himachal Pradesh Municipalities Servants (Punishment, Removal, Suspension and Appeal) Rules, 1971, the same having been previously published in the official gazette. as required by sub-section (5) of section 225 and section 273 of the said Act, namely:—

RULES

PART I—GENERAL

1. *Short title and commencement.*—(1) These Rules may be called the Himachal Pradesh Municipalities Servants (Punishment, Removal, Suspension and Appeal) Rules, 1971.

(ii) These rules shall come into force at once.

2. *Definition.*—In these Rules unless the context otherwise requires,—

- (i) “Appointing Authority” or “Competent Authority” with reference to any action means the authority of the Municipality competent under the law to take such action.
- (ii) “Committee” means a Municipal Committee or Notified Area Committee established by or under the Himachal Pradesh Municipal Act, 1968.
- (iii) “Disciplinary Authority” means the authority competent under these rules to impose on a servant any of the penalties specified in rules.
- (iv) “Municipality” means Municipal Committee or Notified Area Committee.
- (v) “Servant” means a person appointed to any service or post in connection with the affairs of a Municipality.
- (vi) “State Government” means the Government of Himachal Pradesh.

3. *Application.*—The provisions of these rules shall apply to all municipalities in Himachal Pradesh and these shall also apply *mutatis mutandis* to Simla Municipal Corporation or any other Municipal Corporation Constituted under any other enactment made in this behalf.

PART II—SUSPENSION

4. *Suspension.*—(1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Committee in that behalf may place a servant under suspension,—

- (a) Where a disciplinary proceeding against him is contemplated or is pending; or
- (b) where a case against him in respect of any criminal offence is under investigation inquiry or trial:

Provided that where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

- (2) A servant shall be deemed to have been placed under suspension by an order of the appointing authority.
 - (a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours;
 - (b) with effect from the date of his conviction if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation.—The period of forty-eight hours referred to in clause (b) of his sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purposes intermittent period of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal of compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the servant shall be deemed to have been placed under suspension by the appointing authority from the date of original order of dismissal, removal, or compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any disciplinary proceeding is commenced against him during the continuance of that suspension the authority competent to place him under suspension, may, for reasons to be recorded by him in writing, direct that the servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any other authority to which that authority is subordinate.

PART III—PENALTIES AND DISCIPLINARY AUTHORITIES

5. *Penalties.*—The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a servant, namely:—

MINOR PENALTIES

- (i) censure;
- (ii) withholding of his promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Committee by negligence or breach of orders;
- (iv) withholding of increments of pay;

MAJOR PENALTIES

- (v) reduction to a lower stage in a time-scale of pay for a specified period, with further directions as to whether or not the servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the servant to the time scale of pay, grade, post or service from which he was reduced, with or without further

directions regarding conditions of restoration to the grade or post or service from which the servant was reduced and his seniority and pay on such restoration to that grade, post or service;

- (vii) compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment;
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment.

Explanation.—The following shall not amount to penalty within the meaning of this rule namely :—

- (i) withholding of increments of a servant for his failure to pass a departmental examination in accordance with the rules or orders governing the service or post or the terms of his appointment;
- (ii) stoppage of a servant at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar;
- (iii) non-promotion of a servant whether in a substantive or officiating capacity, after consideration of his case, to a service, grade or post for promotion to which he is eligible;
- (iv) reversion to a lower service, grade or post of a servant officiating in a higher service, grade or post on the ground that he is, considered, after trial, to be unsuitable for such higher service, grade or post or on any administrative ground unconnected with his conduct;
- (v) reversion to his permanent service, grade or post of a servant appointed on probation to another service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation;
- (vi) replacement of the service of a servant, whose service have been borrowed from a State Government or Central Government or an authority under the control of a State Government or Central Government at the disposal of the authority which had lent his services;
- (vii) compulsory retirement of a servant in accordance with the provisions relating to his superannuation or retirement;
- (viii) termination of the services—
 - (a) of a servant appointed on probation, during or at the end of the period of probation, in accordance with the terms of his appointment or the rules and orders governing such probation; or
 - (b) of a servant employed under the provisions of section 44 of the Himachal Pradesh Municipal Act, 1968 ; or
 - (c) of a servant employed under an agreement in accordance with the terms of such agreement.

6. Authority to institute proceedings.—(1) The competent authority or any other authority empowered by him by general or special order may—

- (a) institute disciplinary proceedings against any servant;
- (b) direct a disciplinary authority to institute proceedings against any servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in rule 5.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of rule 5 may institute disciplinary proceedings against any servant for the imposition of any of the penalties specified in clauses (v) to (ix) of rule 5 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter. penalties,

PART IV—PROCEDURE FOR IMPOSING PENALTIES

7. *Procedure for imposing major penalties.*—(1) No order imposing on a servant any of the penalties specified in clauses (v) to (ix) of rule 5 shall be made except after an inquiry held, as far as may be in the manner provided in this rule and rule 8, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such enquiry is held under that Act.

(2) Whenever the competent authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a servant, it may itself inquire into or appoint under this rule or under the provisions of the Public Servants, (Inquires) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Explanation.—Where the competent authority itself holds the inquiry, any reference in sub-rule (7) sub-rule (20) and sub-rule (22) to the inquiring authority shall be construed as a reference to the competent authority.

(3) Where it is proposed to hold an inquiry against a servant under this rule and rule 8, the competent authority shall draw up or cause to be drawn up—

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charges;
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain—
 - (a) a statement of all relevant facts including any admission or confession made by the servant;
 - (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be substantiated.

(4) The competent authority shall deliver or cause to be delivered to the servant a copy of the articles of charge the statement of the imputations or misconduct or misbehaviour and a list of documents and witness by which each article of charges is proposed to be sustained and shall require the servant to submit, within such time as may be specified a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the competent authority may itself inquire into such of the articles of charge as are not admitted, or, if consider it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose and where all the articles of charge have been admitted by the servant in his written statement of defence, the authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the matter laid down in rule 8.

(b) If no written statement of defence is submitted by the servant, the competent authority may itself inquire into the article of charge or may, if it considers it necessary to do so, appoint under sub-rule (2), an inquiring authority for the purpose.

(c) Where the competent authority itself inquires into any articles of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a servant of a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The competent, authority shall, where it is not the inquiring authority, forward, to the inquiring authority—

- (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

- (ii) a copy of the written statement of defence if any submitted by the servant;
- (iii) a copy of the statements of witnesses, if any referred to in sub-rule (3);
- (iv) evidence proving the delivery of the documents referred to in sub-rule (3) to servant; and
- (v) a copy of the order appointing the "Presenting Officer".

(7) The servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow.

(8) The servant may take the assistance of any other servant to present the case on his behalf, but may not engage a legal practitioner for the purposes unless the Presenting Officer appointed by the competent authority is a legal practitioner, or, the competent authority, having regard to the circumstances of the case, so permits.

(9) If the servant who has not admitted, any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the servant thereon.

(10) The inquiring authority shall return a finding of guilty in respect of those articles of charge to which the servant pleads guilty.

(11) The inquiring authority shall, if the servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge and shall adjourn the case to later date not exceeding thirty days, after recording an order that the servant may, for the purpose of preparing his defence:—

- (i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow the documents specified in the list referred to in sub-rule (3);
- (ii) submit a list of witnesses to be examined on his behalf;

Note.—If the servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the competent authority.

- (iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery of production of any documents which are in possession of Committee but not mentioned in the list referred to in sub-rule (3).

Note.—The servant shall indicate the relevance of the documents required by him to be discovered or produced by the Committee.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forwarded the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition ;

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of fall or any of such documents should be against the public interest or security of the State Government/of the Committee it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the competent authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross examined by or on behalf of the servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the competent authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the servant or may itself call for new evidence or recall and re-examine any witness and in such case the servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence exclusive of the day of adjournment and the day to which the inquiry is adjourned, The inquiring authority shall give the servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow, the servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice.

Note.—New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the competent authority is closed, the servant shall be required to state his defence, orally or in writing, as he may prefer, if the defence is made orally, it shall be recorded and the servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the servant shall then be produced. The servant may examine himself in his own behalf if he so prefers. The witnesses produced by the servant shall then be examined and shall be liable to cross examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the competent authority.

(18) The inquiring authority may, after the servant closes his case, and shall if the servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the servant

to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the presenting office, if any, appointed and the servant, or permit them to file written briefs of their respective case, if they so desire.

(20) If the servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the enquiry *ex-parte*.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of rule 5 (but not competent to impose any of the penalties specified in clauses (v) to (ix) of rule 5), has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of rule 5 should be imposed on the servant, that authority shall forward the records of the inquiry to such competent authority as is competent to impose the last mentioned penalties.

(b) The competent authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice recall the witness and examine cross-examine and re-examine the witness and may impose on the servant such penalty as it may deem fit in accordance with these rules.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor or and partly recorded by itself:

Provided that if the succeeding authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross examine and re-examine any such witnesses as hereinbefore provided.

(23) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain—

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each articles of charge and the reasons therefor.

Explanation.—If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such articles of charge:

Provided that the findings on such charge shall not be recorded unless the servant has either admitted the facts of which such article of charge is based or had a reasonable opportunity of defending himself against such articles of charge.

(ii) The inquiring authority where it is not itself the disciplinary authority shall forward to the disciplinary authority the records of inquiry which shall include—

- (a) the report prepared by it under clause (i) ;
- (b) the written statement of defence, if any, submitted by the servant;
- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs if any filed by the presenting officer or the servant or both during the course of the inquiry; and
- (e) the orders, if any, made by the competent authority and the inquiring authority in regard to the inquiry.

8. *Action on the inquiry report.*—(1) The competent authority if it is not itself the enquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 7 as far as may be.

(2) The competent authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the competent authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 5 should be imposed on the servant, it shall notwithstanding anything contained in rule 9, make an order imposing such penalty.

(4) (i) If the competent authority having regard to its findings on all or any of the articles of charge, is of the opinion, that any of the penalties specified in clauses (v) to (ix) of rule 5 should be imposed on the servant, it shall—

- (a) furnish to the servant a copy of the report of the inquiry held by it and its findings on each article of charge, or, where the inquiry has been held by an inquiring authority, appointed by it, copy of the report of such authority and a statement of its findings on each articles of charge to gether with brief reasons for its disagreement if any, the findings of the inquiring authority;
- (b) give the servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under rule 7.

(ii) The competent authority shall after considering the representation, if any, made by the servant determine what penalty, if any should be imposed on him and make such order as it may deem fit:

Provided that in every case in which it is necessary to obtain previous sanction of the Government the record of the inquiry with copy of the notice given under clause (i) and the representation made in pursuance of such notice, if any, shall be forwarded by the competent authority to the local Self Government Department of Himachal Pradesh Government for the sanction of the Government and in case, any directions are issued by the Government in the case, the same will be taken into consideration before passing any order imposing any penalty on the servant.

9. Procedure for imposing minor penalties.—(1) Subject to the provisions of sub-rule (3) of rule 8, no order imposing on a servant any of the penalties specified in clauses (i) to (iv) of rule 5 shall be made except after—

- (a) informing the servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;
 - (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of rule 7, in every case in which the competent authority is of the opinion that such inquiry is necessary;
 - (c) taking the representation, if any submitted by the servant under clause (a) and the record of inquiry if any, held under clause (b) into consideration; and
 - (d) recording a finding on each imputation of misconduct or misbehaviour.
- (2) The record of the proceedings in such cases shall include—

- (i) a copy of the intimation to the servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the findings on each imputation of misconduct or misbehaviour;
- (vi) the sanction of the Government if any; and
- (vii) the orders of the case together with the reasons therefor.

10. Communication of orders.—Orders made by the competent authority shall be communicated to the servant who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority and a copy of its findings on each articles of charge, or, where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority, and a statement of findings of the competent authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority (unless they have already been supplied to him).

11. Common proceedings.—Where two or more servants are concerned in any case the competent authority may make an order directing that disciplinary action against all of them may be taken in a common proceedings.

Note.—If the authorities competent to impose the penalty of dismissal on such servants are different, an order for taking disciplinary action in a common proceedings may be made by the highest of such authorities with the consent of the others.

(2) Any such order shall specify—

- (i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;
- (ii) the penalties specified in rule 5 which such disciplinary authority shall be competent to impose; and
- (iii) whether the procedure laid down in rule 7 and rule 8 or rule 9 shall be followed in the proceeding.

12. Special procedure in certain cases.—Notwithstanding any thing contained in rule 7 to rule 11—

- (i) where any penalty is imposed on a servant on the ground of conduct which has led to his conviction on a criminal charge; or

- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold in an inquiry in the manner provided in these rules; or
- (iii) where the competent authority is satisfied that in the interest of the security of the Committee, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.

13. Provisions regarding officers borrowed from State Government, etc.—(1)

Where an order of suspension is made or a disciplinary proceeding is taken against a Government servant, whose services have been borrowed from a State Government or the Central Government or an authority lending his services (hereinafter in rule referred to as "the lending authority") shall forthwith be informed of the circumstances leading to the order of suspension of the servant or of the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the servant if the competent authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 5 should be imposed on him, it may, subject to the provisions of sub-rules (3) and (4) of rule 8, after consultation with the lending authority, pass such orders on the case as it may deem necessary.—

- (i) provided that in the event of a difference of opinion between the borrowing authority and the lending authority the services of the servant shall be replaced at the disposal of the lending authority;
- (ii) if the competent authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 5 should be imposed on the servant, it shall replace the services of such servant at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action as it may deem necessary.

PART V—APPEALS

14. Order against which no appeal lies.—Notwithstanding anything contained in this part, no appeal shall lie against—

- (i) any order made by the Government;
- (ii) any order of an interlocutory nature or of the nature of a step-in-aid or the final disposal of a disciplinary proceeding, other than an order of suspension;
- (iii) any order passed by an inquiring authority in the course of an inquiry under rule 7.

15. Orders against which an appeal lie.—Subject to the provisions of rule 14 a servant may prefer an appeal against all or any of the following, namely:—

- (i) an order of suspension made or deemed to have been made under rule 4;
- (ii) an order imposing any of the penalties specified in rule 5 whether made by the disciplinary authority or by any appellate or reviewing authority;
- (iii) an order enhancing any penalty, imposed under rule 5;
- (iv) an order which—

- (a) denies or varies to his disadvantage his pay, allowances or other conditions of service as regulated by rules or by agreement; or
- (b) interprets to his disadvantage the provisions of any such rule or agreement;

(v) an order—

- (a) stopping him at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar;
- (b) reverting him while officiating in a higher service, grade or post to a lower service, grade or post, otherwise than as a penalty;
- (c) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;
- (d) determining his pay and allowances—
 - (i) for the period of suspension, or
 - (ii) for the period from the date of his dismissal, removal or compulsory retirement from service or from the date of his reduction to a lower service, grade, post, time-scale or stage in a time-scale or pay, to the date of his reinstatement or restoration of his service, grade or post, or
- (e) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time-scale of pay or stage in a time-scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.

Explanation.—In this rule the expression “servant” includes a person who has ceased to be in the Committee’s service.

16. Appellate authorities.—(1) A servant, including a person who has ceased to be in the Committee’s service, may prefer an appeal against all or any of the orders specified in rule 15 to the Deputy Commissioner, if the order is made under the rules or agreement, as the case may be, made or entered into by the Committee or any of its officers, and to the Secretary (L.S.G.) to the Himachal Pradesh Government if the order is made under the rules or agreement as the case may be, made or entered into by the Himachal Pradesh Government or any of its officers; or a servant on whom the penalty of dismissal from service can be imposed only with the previous sanction of the Government, may prefer an appeal against all or any of the orders specified in rule 15 to the Government of Himachal Pradesh.

(2) Notwithstanding anything contained in sub-rule (1)—

- (i) an appeal against an order in a common proceeding held under rule 11 shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate;
- (ii) where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.

17. Period of limitation for appeals.—No appeal preferred under this part shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant:

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

18. Form and contents of appeal.—(1) Every person submitting an appeal shall do so separately and in his own name.

(2) The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful, improper language and shall be complete in itself.

(3) The authority which made the order appealed against shall on receipt of a copy of the reappeal, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay and without waiting for any direction from the appellate authority.

19. Consideration of appeal.—(1) In the case of an appeal against an order of suspension, the appellate authority, shall consider whether in the light of the provisions of rule 4 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 5 or enhancing any penalty imposed under the said rule, the appellate authority shall consider—

- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders—

- (i) confirming, enhancing, reducing or setting aside the penalty; or
- (ii) remitting the case to the authority which imposed the penalty; or to any other authority with such direction as it may deem fit in the circumstances of the case:

Provided that—

- (i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 5 and an inquiry under rule 7 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 9, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 7 and thereafter on a consideration of the proceedings of such inquiry and after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions against the penalty proposed on the basis of the evidence adduced during such inquiry, make such orders as it may deem fit;
- (ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 5 and an inquiry under rule 7 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity, as far as may be in accordance with

sub-rule (4) of rule 8 of making a representation against the penalty proposed on the basis of the evidence adduced during the inquiry, make such orders as it may deem fit; and

- (iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of rule 9, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in rule 15, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

20. Implementation of orders in appeal.—The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

PART VI—REVIEW

21. Review.—(1) Notwithstanding anything contained in these rules, the authority to which an appeal against an order imposing any of the penalties in rule 5 lies may, at any time either on his or its own motion or otherwise, call for the records of any inquiry and review any order made under these rules or under the rules repealed by rule 26 from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed, and may—

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 5 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalty specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in rule 7 and after giving a reasonable opportunity to the servant concerned of showing cause against the penalty proposed on the evidence adduced during inquiry.

(2) No proceeding for review shall be commenced until after—

- (i) the expiry of the period of limitation for an appeal; or
- (ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules.

PART VII—MISCELLANEOUS

22. Services of orders, notices, etc.—Every order, notice and other process made or issued under these rules shall be served in person on the servant concerned or communicated to him by registered post.

23. Power to relax time limit and to condone delay.—Save as otherwise expressly provided in these rules, the authority competent under these rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under the rules or condone any delay.

24. Procedure to be adopted for imposition of penalties under section 40 of Himachal Pradesh Municipal Act, 1968.—Before demanding punishment or dismissal etc. of a servant under section 40 of the Himachal Pradesh Municipal Act, 1968; the State Government may direct that before imposing the penalties specified in rule 5, the procedure laid down in these rules shall be followed and thereafter the State Government shall pass necessary orders.

25. Forms.—Standard forms which are generally to be used under these rules are appended.

26. Repeal and savings.—(1) Any rules corresponding to these rules in force immediately before the commencement of these rules and applicable to Municipalities to whom these rules apply are hereby repealed:

Provided that—

- (a) such repeal shall not affect the previous operation of the said rules, or any notification or order made, or anything done, or any action taken, thereunder;
- (b) any proceeding under the said rules, pending at the commencement of these rules shall be continued or disposed of as far as may be, in accordance with the provisions of these rules, as if such proceedings were proceedings under these rules.

(2) Nothing in these rules shall be construed as depriving any person to whom these rules apply, of any right of appeal which had occurred to him under the rules, notification of orders in force before the commencement of these rules.

(3) An appeal pending at the commencement of these rules against an order made before such commencement shall be considered and orders thereon shall be made, in accordance with these rules, as if such orders were made and the appeal were preferred under these rules.

(4) As from the commencement of these rules any appeal or application for review against any orders made before such commencement shall be preferred or made under these rules, as if such orders were made under these rules:

Provided that nothing in these rules shall be construed as reducing any period of limitation for any appeal or review provided by any rule in force before the commencement of these rules.

27. Removal of doubts.—If any doubt arises as to the interpretation of any of the provisions of these rules, the matter shall be referred to the State Government for clarification.

STANDARD FORM OF ORDER OF SUSPENSION

[See rule 5 (1)]

No.....

(Name of the municipality).....

(Place of issue.....dated.....

ORDER

Whereas a disciplinary proceeding against Shri.....(Name and designation of the servant) is contemplated/pending.

Whereas case against Shri..... (Name and designation of the servant) in respect of a criminal offence is under investigation/inquiry/trial.

Now, therefore, the undersigned, in exercise of the powers conferred by sub-rule (1) of rule 10 of the Himachal Pradesh Municipalities Servants (Punishment, Removal, Suspension and Appeal) Rules, 1971 hereby places the said Shri..... under suspension with immediate effect.

It is further ordered that during the period this order shall remain in force the headquarters of Shri..... (Name and designation of servant) shall be.....(Name of the place) and that the said Shri.....shall not leave the headquarters without obtaining the previous permission of the undersigned.

(Signature).....

*Name and designation of the
suspending authority*

Copy to Shri.....(Name and designation of the suspended servant). Orders regarding subsistence allowance admissible to him during the period of his suspension will issue separately.

2. Copy to Shri.....(Name and designation of the competent authority) for information.

3. Copy to Shri.....(Name and designation of the lending authority) for information.

4. The circumstances in which the order of suspension was made are as follows:—

(here give details of the case and reasons for suspension).

Note.—The endorsement at items 2 and 3 and circumstances contained in item 4 above should not be inserted in the copy of the order of suspension sent to the servant to be suspended.

STANDARD FORM OF CERTIFICATE TO BE FURNISHED BY THE SUSPENDED OFFICIAL

I.....(Name of the servant), having been placed under suspension by order No.....dated..... while holding the post ofdo hereby certify that I have not been employed in any business, profession, or vacation for profit/remuneration/salary.

(Signature).....

Name of the servant.....

Address.....

.....

STANDARD FORM OF ORDER FOR REVOCATION OF SUSPENSION ORDER

[See rule 4 (5) (c)]

No.....

(Name of the municipality).....

(Place of issue.....dated.....).

ORDER

Whereas an order placing Shri.....(Name and designation of the servant) under suspension was made/was deemed to have been made by..... on.....

Now, therefore, the undersigned, in exercise of the powers conferred by clause (c) of sub-rule (5) of rule 4 of the Himachal Pradesh Municipalities Servants (Punishment, Removal, Suspension and Appeal) Rules, 1971, hereby revokes the said order of suspension with immediate effect.

(Signature).....

Name and designation of the authority making this order.

1. Copy to Shri.....(Name and designation of the suspended servant).

2. Copy to Shri.....(Name and designation of the competent authority) for information.

3. Copy to Shri.....(Name and designation of the lending authority making the order of suspension).

4. Copy to Shri.....(Name and designation of the authority making the order of suspension).

5. The reasons for revoking the order of suspension are as follows:—
(here give in brief the reasons).

NOTES

1. Endorsement as in item 2 should be made where the order of revocation of suspension is made by an authority lower than the competent authority.

2. Endorsement as in item 3 should be made where the order of suspension has been made against a "Borrowed Officer".

3. Endorsement as in item 4 should be made where the order of revocation of suspension is made by an authority which made or is to have made the order of suspension.

4. Item 5 should be inserted only if an endst. as in item 2, 3 or 4 is made.

5. Items 2 to 5 should not be inserted in the copy sent to the suspended servant.

STANDARD FORM OF CHARGESHEET

(See rule 7)

No.....

(Name of the municipality).....

(Place of issue.....dated.....).

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri..... under rule 7 of the Himachal Pradesh Municipalities Servants (Punishment, Removal, Suspension and Appeal) Rules, 1971. The substance of the imputations of misconduct or misbehaviour in respect which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure III and IV).

2. Shri.....is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should therefore, specifically admit or deny each article of charge.

4. Shriis further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority of otherwise fails or refuses to comply with the provisions of rule 7 of the Himachal Pradesh Municipalities Servants (Punishment, Removal, Suspension and Appeal) Rules, 1971 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him *ex-parte*.

5. Attention of Shri.....is invited to rule..... of the Municipal Committee/Municipal Corporation, Notified Area Committee Servants (Conduct) Rules, 1970 under which no servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Committee. If any representation is received on his behalf from another person in respect of any matter dealt with in the proceedings it will be presumed that Shri..... is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of rule of the rules referred to in this paragraph.

6. The receipt of the memorandum may be acknowledged.

(Signature).....

Name and designation of the
competent authority.

To

Shri.....
.....

ANNEXURE I

Statement of articles of charge framed against Shri.....
(Name and designation of the servant).

ARTICLE OF CHARGE I

That the said Shri.....while functioning as.....
during the period.....

ARTICLE OF CHARGE II

That during the aforesaid period and while functioning in the aforesaid office,
the said Shri

ARTICLE OF CHARGE III

That during the aforesaid period and while functioning the aforesaid office,
the said Shri.....

ANNEXURE II

Statement of imputations of misconduct or misbehaviour in support of the ar-
ticles of charge framed against Shri.....(Name and
designation of the servant).

ANNEXURE III

List of documents by which the articles of charge framed against Shri.....
.....(Name and designation of servant) are proposed to be sustained.

ANNEXURE IV

List of witnesses by whom the articles of charge framed against Shri.
.....(Name and designation of the servant) are proposed to be sus-
tained.

STANDARD FORM OF ORDER RELATING TO APPOINTMENT OF INQUIRY OFFICER/BOARD OF ENQUIRY [See rule 7(2)]

No.....
(Name of the municipality).....

(Place of issue.....dated.....)

ORDER

Whereas an inquiry under rule 7 of the Himachal Pradesh Municipalities Servants
(Punishment, Removal, Suspension and Appeal) Rules, 1971, is being held against.

.....(Name and designation of the servant).

And whereas the undersigned considers that a Board of Enquiry/Inquiry Officer should be appointed to inquire into the charges framed against him.

Now, therefore, the undersigned, in exercise of the powers conferred by sub-rule (2) of the said rule, hereby appoints—

a Board of Enquiry consisting of

- (1)
- (2)
- (3)

Here enter names and designation of member of Board of Enquiry.

or

Shri.....(Name and designation of the Inquiry Officer) to inquire into the charge framed against the said Shri.....

Signature.....

Designation of the Competent Authority.

Copy to.....(Name and designation of the servant).

*Copy to.....(Name and designation of Member of the Board of Enquiry/Inquiry Officer).

*Copy to.....(Name and designation of the lending authority) for information.

*To be used wherever applicable. Not to be inserted in the copy sent to the servant.

STANDARD FORM FOR THE ISSUE OF SHOW CAUSE NOTICE

[See rule 8(4)]

No.....

(Name of the municipality).....

(Place of issue.....dated.....)

MEMORANDUM

The undersigned is directed to enclose a copy of the inquiry report submitted by the officer appointed to inquire into the charge against Shri..... (Name, designation and office of the servant in which he is employed) (*under suspension).

2. On a careful consideration of the inquiry report aforesaid, the undersigned agrees with the findings of the Inquiry Officer and holds that the articles of charge is/are proved. The undersigned has, therefore, provisionally come to the conclusion that Shri..... is not a fit person to be retained in service and so the undersigned proposes to impose on him the penalty of dismissal from service/removal from service/compulsory retirement.

or

Shri.....(Name of servant) is not a fit person to be retained as.....(Name of post) in the time scale of pay of Rs.....of service in the grade of.....(Name of grade) in grade.....of the.....a name as.....(Name of post held by the servant) in the.....

*Only in cases where applicable.

service (Name of service) and so the undersigned proposes to impose on him the penalty of reduction to the post of (Name of post) in the time scale of pay Rs.....in the grade of..... (Name of grade)/grade.....of the (Name of the post) of..... (Name of post to which reduced) the..... services (Name of the service to which reduced).

or

The penalty of reduction to the lower stage at Rs.....in the time scale of pay of Rs.....may be imposed on Shrifor a period of..... (here state the period).

3. Shri..... (Name of the servant) is hereby given an opportunity of making representation on the penalty proposed but only on the basis of the evidence adduced during the inquiry any representation which he may wish to make on the penalty proposed will be considered by the undersigned. Such representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this Memorandum by Shri..... (Name of the servant).

4. The receipt of this memorandum should be acknowledged.

Name and designation of the competent authority.

To

..... (Name, designation and office of the servant).

STANDARD FORM FOR ISSUE OF SHOW CAUSE NOTICE

[See rule 8(4)(ii)]

No.....
(Name of the municipality).....
(Place of issue.....dated.....)

MEMORANDUM

The undersigned is directed to enclose a copy of the inquiry on each article of charge submitted by the officer appointed to inquire into the charges against Shri..... (Name, designation and office of the servant in which is employed) (*under suspension).

2. On a careful consideration of the inquiry report aforesaid, the undersigned agrees with the finding of the Inquiry Officer in so far as it related to article(s) of charge No.(s)..... and for reasons stated in the attached memorandum holds that article(s) of charge No.(s)..... which the Inquiry Officer has held as not proved/proved is also proved/not proved. The undersigned has therefore, provisionally come to the conclusion that Shri..... is not a fit person to be retained in service and so the undersigned proposes to impose on him the penalty of dismissal from service/compulsory retirement.

or

Shri..... (Name of the servant) is not a fit person to be retained as..... (Name of post) in the time scale of

* Only in cases where applicable.

pay of Rs.....
 service in the grade of.....(Name of
 grade) in grade of the.....(Name of the service)
 as.....(Name of the post held by the servant)
 in the.....service (name of service) and so the under-
 signed proposes to impose on him the penalty of reduction to the post.....
 (Name of post).....in the time scale of pay of Rs.....
 (Name of service).....
 the grade of.....(Name of grade).....of
 the.....the post of.....(Name of the post
 to which reduced).
 the.....service (Name of service to which reduced).

The penalty of reduction to lower stage at Rs.....in
 the time scale of pay of Rs.....may be imposed on Shri.....
for a period of(here state the period)

3. Shri.....(Name of the servant) is hereby given
 an opportunity of making representation on the penalty proposed, but only on the basis
 of the evidence adduced during the inquiry. Any representation which he may wish
 to make on the penalty proposed will be considered by the undersigned. Such repre-
 sentation if any, should be made in writing and submitted so as to reach the under-
 signed not later than fifteen days from the date of receipt of this memorandum by Shri
(Name of the servant).

4. The receipt of this memorandum should be acknowledged.

*Name and designation of the
 competent authority.*

To

.....(Name, designation and office of the servant).

STANDARD FORM OF MEMORANDUM OF CHARGE FOR IMPOSING MINOR PENALTIES

(See rule 9)

No.....

(Name of the municipality).....

(Place of issue..... dated.....)

MEMORANDUM

Shri.....(designation.....)(office
 in which working).....is hereby informed that it is
 proposed to take action against him under rule 9 of the Himachal Pradesh Municipa-
 lities Servants (Punishment, Removal, Suspension and Appeal) Rules, 1970. A state-
 ment of the imputations of misconduct or misbehaviour on which action is proposed
 to be taken as mentioned above, is enclosed.

2. Shri.....is hereby given an opportunity to make such representation as he may wish to make against this proposal.

3. If Shri.....fails to submit his representation within 10 days of the receipt of this memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri.....*ex-parte*.

4. The receipt of this memorandum should be acknowledged by Shri.....

(Signature).....

Name and designation of the
competent authority.

To
Shri.....
.....

STANDARD FORM OF ORDER FOR TAKING DISCIPLINARY ACTION IN COMMON PROCEEDINGS

(See rule 11)

No.....

(Name of the municipality).....

(Place of issue..... dated.....)

ORDER

Name of
Servants Whereas the servants specified in the margin are jointly concerned in a disciplinary case.

*Now, therefore, in exercise of the powers conferred by sub-rules (1) and (2) of rule 11 of the Himachal Pradesh Municipalities Servants (Punishment, Removal, Suspension and Appeal) Rules, 1971, the undersigned hereby directs—

(i) that disciplinary action against all the said servants shall be taken in a common proceeding;

***(ii)* that.....(Name and designation of the authority) shall function as the Disciplinary Authority for the purpose of the common proceeding and shall be competent to impose the following penalties, namely:—

†(Here specify the penalties)

*The authority competent to impose the penalty of dismissal from service on all such servants of if they are different the highest to such authorities with the consent of others. See rule 11(1).

**See rule 11(2)(i).

†See rule 11(2)(ii).

‡(iii) that the procedure prescribed in rules £7, 8 and 9 shall be followed in the said proceedings.

(Signature).....
Name and designation of the
competent authority.

Copy to—

1. Shri.....(Name and designation).
2. Shri.....Name and designation).
3. Shri.....(Name and designation).

‡See rule 11(2)(iii).

£Score out the portion not applicable.

By order,
P. K. MATTOO,
Secretary.